

FILED BY CLERK

MAR 29 2007

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,

Appellee,

v.

MIGUEL MARTIN-SANCHEZ,

Appellant.

)
)
) 2 CA-CR 2006-0314
) DEPARTMENT A
)

MEMORANDUM DECISION

) Not for Publication
) Rule 111, Rules of
) the Supreme Court
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20061824

Honorable Charles Sabalos, Judge

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Kathryn A. Damstra

Tucson
Attorneys for Appellee

Creighton Cornell, P.C.
By Creighton Cornell

Tucson
Attorneys for Appellant

H O W A R D, Presiding Judge.

¶1 After a bench trial, appellant Miguel Martin-Sanchez was convicted of failing to stop at the scene of an automobile accident, a class three misdemeanor. The justice court suspended the imposition of a fine on the condition that Martin-Sanchez complete traffic survival school. Martin-Sanchez appealed to the Pima County Superior Court, which affirmed. On appeal from that decision, Martin-Sanchez raises several issues. Because our jurisdiction is limited to determining the facial validity of A.R.S. § 28-662, we address only that issue. And because we conclude § 28-662 is facially valid, we affirm.

¶2 A defendant may only appeal the superior court's decision in a matter originating in the justice court "if the action involves the validity of a tax, impost, assessment, toll, municipal fine or statute." A.R.S. § 22-375(A). Where, as here, the challenge is to the validity of a statute, we have jurisdiction only to determine the facial validity of the statute, and we are "without jurisdiction to review any alleged unconstitutional application of the statute." *State v. Wolfe*, 137 Ariz. 133, 134, 669 P.2d 111, 112 (App. 1983). Accordingly, we lack jurisdiction to address Martin-Sanchez's arguments that the evidence was insufficient, the trial court "[c]reated a [s]tatutory [e]lement [t]hat [d]oes [n]ot [e]xist," the rule of lenity requires the statute be interpreted in his favor, and he was denied his right to present a defense.

¶3 Martin-Sanchez further argues that the statute is unconstitutionally vague on its face. We have jurisdiction to address this argument.¹ *See id.* We review de novo the constitutionality of a statute. *State v. Ramsey*, 211 Ariz. 529, ¶ 17, 124 P.3d 756, 762 (App. 2005). “When a statute is challenged as vague, we presume that it is constitutional and we construe it as to render it, if possible, constitutional.” *State v. McDermott*, 208 Ariz. 332, ¶ 12, 93 P.3d 532, 535-36 (App. 2004). The presumption of constitutionality “requires the challenging party to establish beyond a reasonable doubt that the statute violates some provision of the constitution.” *State v. Brown*, 207 Ariz. 231, ¶ 15, 85 P.3d 109, 114 (App. 2004), *quoting Bird v. State*, 184 Ariz. 198, 203, 908 P.2d 12, 17 (App. 1995).

¶4 “A statute whose terms are vague and conclusory does not satisfy due process requirements.” *Id.* ¶ 16, *quoting In re Maricopa County Juvenile Action No. JS-5209 & No. JS-4963*, 143 Ariz. 178, 183, 692 P.2d 1027, 1032 (App. 1984). Accordingly, statutes must “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly,” and, in order to prevent “arbitrary and discriminatory enforcement . . . , laws must provide explicit standards for those who apply

¹Martin-Sanchez minimally raised this argument for the first time in his motion for new trial in the justice court, filed the same day as his notice of appeal. Nothing in the record establishes the justice court ever addressed the argument. But Martin-Sanchez argued the statute was vague in the superior court, and the superior court addressed it. We therefore address it also.

them.” *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S. Ct. 2294, 2298-99 (1972); *see also Brown*, 207 Ariz. 231, ¶ 16, 85 P.3d at 115.

¶5 Section 28-662 provides, in relevant part:

A. The driver of a vehicle involved in an accident resulting only in damage to a vehicle that is driven or attended by a person shall:

1. Immediately stop the vehicle at the scene of the accident or as close to the accident scene as possible but shall immediately return to the accident scene.

2. Remain at the scene of the accident until the driver has fulfilled the requirements of [A.R.S.] § 28-663 [requiring the driver to provide certain information to the other driver].

3. Make the stop without obstructing more traffic than is necessary.

The statute provides explicit instructions, requiring the driver involved in an accident to stop as close to the accident scene as possible but without obstructing more traffic than necessary, and then to return to the accident scene and provide certain information to the other driver. A person of reasonable intelligence could understand and comply with these statutory instructions. *See Grayned*, 408 U.S. at 108, 92 S. Ct. at 2298-99; *Brown*, 207 Ariz. 231, ¶ 16, 85 P.3d at 115.

¶6 Martin-Sanchez argues “the statute contains no notice of a duty to indefinitely stop until there is contact with police.”² But the statute does not impose a requirement that

²Martin-Sanchez also argues in his reply brief that the statute does not address “what should happen . . . when a driver cannot share information with another driver.” But

the driver remain at the scene until there is contact with police; rather, in conjunction with § 28-663, it requires the driver to stop as close to the accident scene as possible, return to the accident scene, and provide information to the other driver. And to the extent Martin-Sanchez's argument rests on application of § 28-662 to the specific facts of this case, we lack jurisdiction to address it. *See Wolfe*, 137 Ariz. at 134, 669 P.2d at 112. Accordingly, we conclude § 28-662 is not unconstitutionally vague on its face.

¶7 For the foregoing reasons, we affirm Martin-Sanchez's conviction and sentence.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

GARYE L. VÁSQUEZ, Judge

because Martin-Sanchez raises this argument for the first time in his reply brief, we do not address it. *See State v. Shipman*, 208 Ariz. 474, n.2, 94 P.3d 1169, 1171 n.2 (App. 2004) ("We may disregard arguments raised for the first time in an appellant's reply brief.").